

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 690 Section 690.115 Jurisdictional Questions</b>
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**TITLE 86: REVENUE**

**PART 690**

**SALEM CIVIC CENTER RETAILERS' OCCUPATION TAX**

**Section 690.115 Jurisdictional Questions**

a) Metropolitan Area Defined

When used in this Part, "metropolitan area" means all territory in the State of Illinois lying within the corporate boundaries of the City of Salem in Marion County.

b) Mere Solicitation of Orders not Doing Business

- 1) For a seller to incur Salem Civic Center Retailers' Occupation Tax liability in a given metropolitan area, the sale must be made in the course of such seller's engaging in the retail business within such metropolitan area. In other words, enough of the selling activity must occur within the metropolitan area to justify concluding that the seller is engaged in business within the metropolitan area with respect to that sale.
- 2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction, with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the metropolitan area as the taxing jurisdiction as much as to the State as the taxing jurisdiction.

c) Seller's Acceptance of Order

- 1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the metropolitan area or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the metropolitan area or by someone working out of such place of business, the seller incurs Salem Civic Center

Retailers' Occupation Tax liability in that metropolitan area if the sale is at retail and the purchaser receives the physical possession of the property in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

- 2) If a purchase order is accepted outside this State, but the tangible personal property which is sold is in an inventory of the retailer located within the metropolitan area at the time of its sale (or is subsequently produced in the metropolitan area), then delivered in Illinois to the purchaser, the place where the property is located at the time of the sale (or subsequent production in the metropolitan area) will determine where the seller is engaged in business for Salem Civic Center Retailers' Occupation Tax purposes with respect to such sale.

d) Some Considerations that are not Controlling

- 1) Delivery of the property within the metropolitan area to the purchaser is not necessary for the seller to incur Salem Civic Center Retailers' Occupation Tax liability. It is sufficient that the purchaser receives the physical possession of the property somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intermetropolitan area commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the metropolitan area for the seller to be regarded as being engaged in the business of selling within such metropolitan area with respect to that sale.
- 2) The point at which the tangible personal property will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether or not the seller incurs Salem Civic Center Retailers' Occupation Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the metropolitan area" in the Salem Civic Center Use and Occupation Tax Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See *Standard Oil Company vs. Department of Finance et al.*, 383 Ill. 136 (1943), for a similar problem under the Illinois Retailers' Occupation Tax Act.)

e) Place of Business Where Long Term or Blanket Contracts are Involved

Under a long term blanket or master contract which (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for Salem Civic Center Retailers' Occupation Tax purposes with respect to such orders.

f) Sales Through Vending Machines

The seller's place of engaging in business when making sales through a vending

machine is the place where the vending machine is located when such sales are made.

g) Sales from Vehicles Carrying Uncommitted Stock of Goods

The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made - the vehicle carrying such stock of goods for sale being regarded as a portable place of business.

h) Sales of Coal or Other Minerals

For the purpose of determining the tax that is applicable, a retail sale, by a producer of coal or other mineral mined in Illinois, is a sale at retail at the place where the coal or other mineral mined in Illinois is extracted from the earth. For purposes of this Section, "extracted from the earth" means the location at which the coal or other mineral is extracted from the mouth of the mine.

- 1) A retail sale is a sale to a user, such as a railroad, public utility or other industrial company, for use. "Mineral" includes not only coal, but also oil, sand, stone taken from a quarry, gravel and any other thing commonly regarded as a mineral and extracted from the earth.
- 2) A mineral produced in Illinois, but shipped out of Illinois by the seller for use outside Illinois, will generally be tax exempt under the Commerce Clause of the Federal Constitution (i.e., as a sale in interstate commerce). This exemption does not extend, however, to sales to carriers, other than common carriers by rail or motor, for their own use outside Illinois if the purchasing carrier takes delivery of the property in the metropolitan area and transports it over its own line to an out-of-State destination.
- 3) A sale by a mineral producer to a wholesaler or retailer for resale would not be a retail sale by the producer and so would not be taxable. The taxable sale (the retail sale) is the final sale to the user, and the Salem Civic Center Retailers' Occupation Tax on that sale will go to the metropolitan area where the retailer is located.

(Source: Amended at 25 Ill. Reg. 8260, effective June 22, 2001)